SENATOR SCOTT.

Senate Committee on Privileges and Elections.

VINDICATED SENATOR SCOTT

And His Title to a Seat in the Senate Against the Contention of John T. McGraw by Declaring that "Nathan B. Scott, a Senator from the State of West Virginia, is Entitled to Retain His Seat."

Special Dispatch to the Intelligencer.

WASHINGTON, March 21.—The report of the senate committee on privileges and elections with regard to the protest of John T. McGraw against the seating of Senator N. B. Scott, which was submitted to the senate yesterday, is an interesting document and will be read with interest by West Virginians. It is as follows:

The committee on privileges and elections, to whom was referred a certain memorial of John T. McGraw, a citizen of West Virginia, and a certain memorial of John J. Cornwell and others, each memorial protesting against the seating of Hon. N. B. Scott as a senator from that state, have considered the same and respectfully report:

The certificate of the governor of West Virginia, in due form, of the election of Mr. Scott by the legislature constituted a prima facie title in Mr. Scott to a seat in the senate, and thereupon he was admitted to take the oath of office. The remonstrants insist that he is not entitled to a seat in this body.

The matter was submitted to the committee upon the memorials, the journals of each house, an agreed statement of facts, and certain oral arguments and admissions of counsel at the hearing. The remonstrants offer to prove certain declarations of several state officials, of members of the general assembly, and of attorneys in argument before legislative committees; also certain acts of persons, detailed in certain alleged depositions, submitted in printed form, but the committee was of opinion that there was no proffer of sufficient evidence of fraud or intimidation affecting the election to warrant such investigation by the committee.

On January 24, 1899, the two houses of the legislature of West Virginia each balloted, but failed to concur in the appointment of a senator, and on the next day both house met in joint assembly and upon the first ballot the whole number of votes cast was 96, of which Mr. Scott received 48, Mr. McGraw 46 and Mr. Goff 1. Thereupon the presiding officer of the joint assembly declared that Nathan B. Scott having received the majority of the votes cast by both branches of the legislature voting in joint assembly he is duly elected a senator in the Congress of the United States. The joint assembly thereupon adjourned.

A quorum of the joint assembly and a quorum of each house was present and voted. The proceedings were regular, and resulted in the election of Mr. Scott, unless certain admitted facts constitute a valid objection to his election.

The memorial of John J. Cornwell and other members states briefly, and the memorial of John T. McGraw states fully, the objections of the remonstrants to Mr. Scott's title to a seat in this body.

The objections stated by Mr. McGraw are five in number.

The first objection assigned is that Mr. Scott did not receive a majority of the votes constituting such joint assembly, that there were in said body 97 votes, a majority of which is 49, and that Mr. Scott received but 48 votes.

The journal of the joint assembly on January 25, 1899 (house journal, p. 189), shows 25 senators and 70 members of the house of delegates present and voting; shows 95 to be the whole number of votes cast, and of these Mr. Scott received 48 votes—a majority of all votes cast.

Under the apportionment the senate contained one more member and the house one more member. The journal of the joint assembly discloses nothing concerning these two. It does not appear therefrom whether they were present. It does not show that they were entitled to vote, or that they in any manner claimed or waived the right to vote. Prima facie, from the journal of the joint assembly, either they were not entitled and were not present, or if present did not claim or waive their right to vote. Therefore this journal shows that Mr. Scott received a valid majority of the joint assembly, consisting of 95 members.

As was said in Lapham and Miller (senate election cases, p. 602):

The ground alleged is that there was not a majority of the whole legislature actually voting for the members chosen. In our opinion that is not necessary. There was a quorum of each house present in the joint assembly; there was a majority of that quorum actually voting for the members chosen. In our opinion that was a valid election.

See also Clark and Maginnis vs. Sanders and Power (senate election cases, 637); Davidson vs. Call (senate election cases, 711).

The journals of the senate and house explain the non-participation of the senator from the Fourth senatorial district and the member of the house of delegates from Taylor county.

On January 20, 1899 (senate journal, p. 66), a resolution was introduced in the senate declaring that Kidd, the sitting member, was not elected and that Morris was duly elected, directing that Kidd vacate his seat and Morris be sworn in.

On January 23, 1899, (senate journal, 91-94), this resolution was considered and a substitute was adopted reciting the contest between Kidd and Morris, the reference to and pendency of the contest before the committee on privileges and elections, and the opinion of the senate that Morris was entitled to the seat pending the contest, whereupon the senate resolved that Kidd was not entitled and that Morris was entitled to a seat in the senate from the Fourth senatorial district pending the contest, and that Morris be sworn in. Morris took the oath and was seated.

On January 25, 1899 (senate journal, p. 1081), the senate adopted a resolution that the contested election case of Morris vs. Kidd be the special order for consideration and determination on its merits on February 7, 1899, with leave to either party to take testimony, "and that pending the determination of such contest neither Morris nor Kidd shall be entitled to vote or sit as a member of this body."

The journal of the house shows the following proceedings in the contest over the seat of the delegate from Taylor county:

The secretary of state, under chapter 3, section 70, of the code of West Virginia, returned to the house when it assembled the list of delegates entitled to participate in its organization, and among them Brohard, of Taylor county, who was sworn in. (House journal, p. 5.)

On January 12, 1899, the house referred to the committee on privileges and elections the question of the right of Brohard to be sworn in, with instructions to report the person prima facie entitled to be sworn in as member from Taylor county. On January 16, 1899, the house adopted a resolution reported from said committee that, pending determination of the title to the seat, neither Brohard nor Dent (the contestee) "be permitted to participate in the proceedings of this house."

On January 24, 1899, the majority of said committee reported a resolution that Dent was elected a delegate from Taylor county, and that he at once be qualified and take his seat.

On January 25, 1899, the house unanimously resolved that the consideration of the majority and minority reports concerning the contest in relation to the delegate from Taylor county be postponed until February 7, with leave to either party to take testimony.

The judgment of the senate was a finality in respect of Morris and Kidd. The judgment of the house was a finality in respect of Dent and Brohard. Each of them was adjudicated not qualified to participate or vote in the house wherein he claimed a seat, pending the final decision of the body which by the constitution of West Virginia (article 6, section 24) is made "the judge of the election returns and qualifications of its own members."

Therefore, on January 25, 1899, only 95 members had the right to participate in the two houses; only 95 members had the right to participate and vote in the joint assembly. Of these Mr. Scott received 48 votes—a majority. Therefore the first objection, that there were 97 votes in the joint assembly, and that a majority was 49, is unfounded.

The second objection assigned is, that "of 48 votes received by Mr. Scott were the votes of Senators Genzendanner and Pearson, cast and received against a protest spread upon the journal of the joint assembly, and showing that the senators had, under article 6, section 13, of the state constitution, forfeited their seats as senators in the legislature by the acceptance of lucrative offices under the federal government, and likewise their right to vote in said joint convention."

These protests show that Senators Getzendanner and Pearson accepted commissions in the Second regiment of West Virginia volunteers, and discharged the duties and received the pay of captain and lieutenant, respectively, while in the service of the United States during the Spanish war. These facts are admitted, and it is further admitted that these senators were "hold-over soldiers," who, between the session of the last legislature and the assembling of the new legislature in 1899 had accepted, had served and had resigned their commissions prior to the twenty-fourth regular session of the state legislature. The protest further recites that these two senators had vacated their seats and forfeited their right to vote in the joint convention, as stated in the second objection.

It appears by the journal of the joint assembly that Senators Getzendanner and Pearson were present therein and voted for Mr. Scott.

The constitutional provision is that—

"No person holding a lucrative office under this state, the United States or any foreign office * * * shall be eligible to a seat in the legislature."

On January 20, 1899, resolutions of like tenor and effect with these protests were offered in the senate, declaring that by virtue of this constitutional provision and the acceptance of said commissions each of these senators "thereby became ineligible and forfeited his right to a seat in this body." These resolutions were referred to the committee on privileges and elections, and on January 23, 1899, that committee reported in lieu of said resolutions a substitute declaring that Getzendanner and Pearson are legally qualified and entitled to hold their membership in the senate and have not vacated their seats therein under the provisions of section 13 of article 3. The senate adopted the substitute on January 24, 1899.

This judgment of the senate of West Virginia upon the title of Senators Getzendanner and Pearson to their seats therein is a finality. The senate of the United States cannot reverse it. As before said, the state senate is, under the state constitution, "the judge of the elections, returns and qualifications of its own members." Such constitutional powers have effect, not only to make the members of each house the judge in each case, but also to forbid that the members of any other tribunal shall be judges thereof to review or reverse such original judgment. The jurisdiction of each of the houses of the state legislature is original and exclusive. (Case of H. A. Du Pont, Fifty-fourth Congress, first session, report No. 289, p. 104.)

The senate of West Virginia is the only tribunal which could either hear or determine lawfully these objections to the qualifications of Senators Geizendanner and Pearson. Its judgment in their favor is final. The senate of the United States has not authority to originate, hear or determine any objections to the qualifications of those who acted and voted as members of the senate of the state. Where the title of an individual member of the legislature who has once been seated has been determined by a subsequent adjudication of the house to which he belongs, such judgment will not be here disturbed or inquired into.

It should be noted that the senate of the United States, in Stanton vs. Lane (senate election cases, 180), upon a similar case came to a like conclusion with the senate of West Virginia. James H. Lane was elected a senator from Kansas in April, 1861, and took his seat July 4, 1861. It appears that on June 20, 1861, President Lincoln appointed him brigadier general of volunteers; that he accepted the appointment and qualified to perform its duties, but had resigned the office. The governor of Kansas appointed Frederic P. Stanton to fill the vacancy, but on January 16, 1862, the senate voted that Lane was entitled to his seat in that body. Of the majority some held that the office of brigadier general did not exist on June 20, 1861; others that, although Lane held the office after he had been elected senator, yet, having resigned the same before taking his seat in the senate, he did not come within the constitutional provision (article 1, section 6). It profits little here to discuss the reasons or motives of state senators of the senate.

It is well said in David Turpie's case (senate election cases, 625), that—

"The body is made by the constitution the judge of the election, qualifications and returns of its members. The senate of Indiana is likewise the judge of the election, qualifications and returns of its own members. We must determine all questions arising out of the proceedings of the electors. But who sustain the character of electors is to be determined by the legislative body of the state. We cannot inquire into the motive which controlled its judgment."

The third and fourth objections of John T. McGraw, remonstrant, may be considered as two parts of the same ground of objection. It is charged that Republican senators in the state senate threatened to unseat unlegally certain Democratic senators unless the house acceded to demands (not stated), and did unseat R. F. Kidd, a Democratic senator, in partial execution of these threats; that thereby the Democratic members went into joint convention under duress; that this joint convention was not held under the law, but under a private agreement between the members of the two houses, ratified by both houses; that this agreement was void as against public policy and vitiated the election of Senator Scott. That the effect of this agreement was to disfranchise one Democratic senator and one Democratic member of the house of delegates, who, had they been permitted to cast their votes in the joint convention, would have voted against Mr. Scott.

It does not appear from the journal of the joint convention that the alleged Democratic senator Kidd and the alleged Democratic delegate Dent were present or offered to vote in the joint convention. Their names were not called. If present, as stated in brief and argument, they appear to have acquiesced, to have waived their alleged right as representatives.

It does appear that the state senate had a Republican majority and the house of delegates had a Democratic majority; and that when the joint convention met that body was comprised of forty-nine Republicans and forty-six Democrats. All of the latter voted for Mr. McGraw; all save one of the Republicans, who voted for Judge Goff, voted for Mr. Scott, giving him one majority, as stated.

It was conceded in briefs of counsel and in their oral arguments that there was excitement and much activity, as is not unusual in legislative bodies in like situations, and that there were contests against sitting members from political motives. One Democrat in the senate, Kidd, had been unseated, and a Republican, Morris, seated in his place. One sitting Republican in the house, Via, had been unseated and a Democrat, Logan, had been seated in his place. Another sitting Republican, Brohard, of Taylor county, had been excluded from participation in the proceedings of the house on January 16, and on January 26 the committee had reported that Dent was entitled to the seat. Neither Kidd, Dent, nor Brohard had voted that day for senator in either house, balloting separately, nor had either offered to vote. In the senate Morris was present and voted for Scott.

As the joint convention was to assemble at noon on the following day, it would appear difficult to unseat Brohard and seat Dent earlier the next morning.

At this juncture the Republicans would have had in joint convention fifty votes and the Democrats would have had forty-six had the joint convention met without further action in either house.

As a result of conferences among adherents of the two parties, five Democratic members of the house, including Mr. McKinney, the speaker, and Mr. Davis, the leader of his party, signed the following proposal which was thereafter presented to and signed by five Republican senators, including Mr. Marshall, the president of the senate. This proposal, which purports to have been made by Democrats and accepted by Republicans, is as follows:

To the Republican Senators:

GENTLEMEN:—In order to bring about a peaceful and orderly settlement of the differences now existing between the two houses of the West Virginia legislature, we submit to you the following propositions, viz:

First, the election and qualification of the member of the house of delegates from Taylor county, to be heard and tried upon its merits.

Second, the election and qualification of a senator from the Fourth senatorial district, to be heard and tried upon its merits.

Third, These two cases to be finally voted upon in each house on the 7th day of February, 1899, after 2 p. m. of that day, with privilege to any party to take any evidence pertinent up and until noon of February 8, 1899, when the taking of evidence shall be closed.

Fourth, all contests and controversies as to the membership of each house other than the two above named to be dismissed, and no further contests or controversies respecting the membership therein to be brought or entertained by either house.

Fifth, pending the investigation herein above referred to, neither Dent, Brohard, Kidd, or Morris shall vote, in joint assembly or otherwise.

Sixth, all resolutions now pending in either house, looking to unseating any member thereof, or questioning the seat of any sitting member, shall be dismissed.

Seventh, each of the signers of this proposition pledges himself to vote and use all honorable means to have the stipulations herein contained faithfully carried out and observed.

O. S. M'KINNEY.
ISAIAH BEE.
W. L. MANSFIELD.
JOHN W DAVIS.
R. W. MOHROW.

We, the undersigned Republican senators, concur in the foregoing proposition.

R. E. FAST.
O. S. MARSHALL.
ALONZO GARRETT.
S. L. BAKER.
S. W. MATTHEWS.

Its first sentence declares its purpose to bring about a peaceful and orderly settlement of the differences now existing between the two houses. It is to be noted that those who are alleged to have acted under duress first signed and submitted the proposal, then those who it is alleged threatened them consented to accept the proposal.

This proposal stipulated that the case of Brohard, Republican, in the house, and the case of Kidd, Democrat, in the senate, shall be heard and tried upon their merits and finally voted on February 7, 1899; that pending the decision of these cases, neither Dent, Democrat, nor Morris, Republican, in the senate, shall vote, in joint assembly or otherwise, and that all contests and resolutions looking to unseating of members shall cease in each house.

The signers pledge themselves individually to so vote, and to use all honorable means to have those stipulations carried out. Five Democrats in the house and five Republicans in the senate were numerically sufficient to change the partisan majority in either house. As these men included the presiding officers of each house and the floor leaders of the majority in each house, their statement of the spirit and purpose of the proposal of these Democrats, accepted by these Republicans in the paper they signed, should be accepted as true.

In the senate, as a result of this conference, Senator Garrett the next morning offered the resolution postponing the Kidd vs. Morris contest, as before stated, and forbidding further participation of Morris in the voting for senator of the United States. It was adopted unanimously.

In the house Mr. Davis offered a like resolution, postponing the discussion of the Dent vs. Brohard contest, as before stated. It was adopted unanimously.

Mr. John W. Davis, conceded by both sides to be a man of ability and high character, the leader of the Democratic majority in the house, also introduced the resolution, in a printed deposition (used by both sides in argument before the committee, and so used here) gives his own reasons for signing this paper and declares that the statement he makes for himself was in accord with conversations he had with other Democratic signers at or before the time the agreement was presented to him for signature. Mr. Davis's statement may therefore, be taken as the statement of all the Democrats who signed this proposal.

Question—What was your understanding of the purpose of that agreement upon the part of the Democrats?

Answer—That agreement, as I understood it, was entered into for the purpose of avoiding further trouble between the two houses and in each house in regard to contests then pending, the situation having become very acute, rumors being current upon all hands of an intention upon the part of the Republican minority in the house to withdraw and organize a separate house and upon the part of the Republican majority in the senate to unseat various Democratic senators, and it being believed that the best interests of the people of West Virginia and the proper conduct of the business of the legislature demanded an early and final settlement of these questions.

In the senate Kidd had been unseated by the Republican majority. In the house Via had been unseated and Brohard was about to be unseated by the Democrats. Other contests were pressed from partisan motives. The pacific understanding of these ten men ended this strife and enabled the legislature to proceed with its business.

It may be that wrong and injustice to members and contestants was done and intended to be done upon one side or the other or on both sides. There is no evidence of force or fraud in these transactions in the documents or facts before us. The unanimous vote in both houses upon resolutions postponing pending contests for seats disproves duress if the word duress has meaning in this remonstrance.

We can not say that such an agreement as this between ten men, and favored afterwards by all members, is "void as against public policy." We cannot declare void the unanimous act of the senate or the unanimous act of the house, of like pacific purpose. Nor can we perceive how it "vitiated said election." Its immediate result was not "to disfranchise one Democratic senator and one Democratic member." Its immediate result, if any, was pacific and the subsequent action of both houses had as its immediate result the disfranchisement of Morris, the sitting Republican senator.

The sitting Republican delegate from Taylor county had eight days before been excluded from participation in the proceedings. The federal statute required this legislature to proceed to elect the senator of the United States on the second Tuesday after organization of the legislature and to meet next day at noon in joint assembly, and pending this joint meeting both houses thus disposed of contested cases. As it was unanimous in both houses, the members appear to have considered it a fair and reasonable plan, as it facilitated the meeting in joint assembly—to have considered it to be in the public interest.

It is true that speedily thereafter Morris was unseated and Kidd seated again, and that Brohard was unseated and Dent seated in his place. The merits of these contests were to be decided by the two legislative bodies having original and exclusive jurisdiction. As we have said, their public and solemn adjudications of the election of these members can not be reviewed, or reversed, or affirmed here. Therefore the third and fourth objections of the remonstrants are insufficient.

A majority of the committee do not mean to decide that the senate could not refuse a seat to a claimant who is elected by a legislature which is itself directly and plainly the result of force or fraud. If, on the eve of a joint assembly, a majority in either house should cease to be judges of the elections and qualifications of members of the minority and become revolutionary conspirators: if, for instance, a majority should imprison enough minority members on the day of the point convention to reverse the majority therein, we do not assert that the senate should not inquire into such violence, force, and intimidation or that it could not declare that there was a joint convention in form only, but not in fact, and that there was no election therefore. In the past the senate has investigated fraud and corruption in elections where the proceedings were regular and the form was lawful, and then declared there had been no election.

The case presented by the remonstrants in nowise resembles such extreme case.

Upon careful consideration of the case before us the majority of the committee agree that Mr. Scott was peacefully and fairly elected, and that the first four objections of the remonstrants are not valid objections.

The fifth objection assigned by John T. McGraw, memorialist, is that at the time of the election of Mr. Scott he was a citizen but not an inhabitant of the state of West Virginia, but was an inhabitant of the District of Columbia.

It is admitted that Mr. Scott was born in Ohio; that when a young man he removed to Wheeling, in West Virginia, engaged in business, had resided there until January 1, 1898, when he was appointed by the President commissioner of internal revenue, and upon his confirmation thereafter he came to Washington to discharge the duties of this federal office, but with the intent to retain his residence, citizenship, inhabitancy, and domicile in Wheeling, W. Va., his home; that in accord with this intent he exercised unchallenged the right to vote and did vote on November 8, 1898, in the precinct in Wheeling, where his residence was and had remained unchanged; that he came here with no intent to change his domicile to Washington from Wheeling, and that he claims to be an inhabitant of Wheeling, W. Va., and that he remained in Washington in the discharge of his official functions with intent to return to his home in Wheeling when his duties of office here ended.

The mere statement of facts should suffice to show that this objection is unfounded. The federal constitution requires that the senator shall be an "inhabitant" of the state. This term is a legal equivalent to the term "resident," and residence is what is required by the law of West Virginia to entitle the male citizens of that state to vote.

The committee, without extended discussion, were unanimously of the opinion that Mr. Scott was an inhabitant of West Virginia at the time of his election to the senate of the United States and is entitled to retain his seat.

The committee ask to be discharged from the further consideration of the several memorials, and recommend the passage of the following resolution:

"Resolved, That Nathan B. Scott, a senator from the state of West Virginia, is entitled to retain his seat."

THE LOUD BILL

And Mr. Sulzer's Resolution Before the House.

WASHINGTON, March 20.—The house to-day, entered upon the consideration of the Loud bill to restrict the character of publications entitled to pound rates as second class mail matter. The bill has been before Congress for several years.

Mr. Loud defended the bill in a long speech. The other speakers were H. C. Smith (Mich.), in favor of the bill, and Messrs. Little (Ark.), Bell (Colo.), Henry (Miss.), Stokes (S. C.), and Brown (Ohio), in opposition to it.

Before the bill was taken up Mr. Sulzer (N. Y.), delivered a denunciation of the administration in connection with his resolution of inquiry calling upon the war department for information as to what fortifications Great Britain was erecting on the Canadian border. The committee on military affairs submitted a reply of Adjutant General Corbin, saying such information was secret, but that Great Britain was erecting no works which threatened our republic. The committee recommended that the resolution lie on the table. The house sustained the committee's recommendation by a vote of 110 to 97.

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